IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 672 OF 1986
AND
SECOND APPEAL NO. 673 OF 1986

S.A.672/86.

1. Dattatraya Krishna Joshi,
aged about 77 years,
Pensioner of Sangli.

2. Madhav Govind Biniwale,
Aged about 68 years.
Trader of Sangli.

3. Keshav Vinayak Bhide,
Aged about 84 years,
Landlord of Sangli. .... Appellants.
(Org.Plaintiffs.)

Versus.

The Sangli Municipal Council
Sangli.
(Notice to be served on the
Chief Officer, Sangli Municipal
Council, At & Post: Sangli.) .... Respondent.
(Org.Defendant.)

Shri S.G.Page for the Appellants.

Shri N.V.Walawalkar for the Respondent.

S.A.673/86.

Sangli Municipal Council,
Sangli. ... Appellant.

Versus.

1. Shri Dattatraya Krishna Joshi,
Aged: 63, Pensioner of C.S.No.
1041, Peth Bhag, Sangli.

2. Shri Madhav Govind Biniwale,
Aged 59, Trader of Biniwale,
Harbhat Road, Sangli.

3. Shri Keshav Vinayak Bhide,
Aged 75, Landlord of Sangli,

C.S.No.945, Main Road, Sangli.

4. Shri Waman Hari Khadilkar,
Aged 69, Pensioner of C.S.No.
945, Main Road, Sangli.

5. Shri Madhukar Ganesh Date,
Aged 50, of Barbhat Road, Old
Murlidhar Mandir, Sangli. ... Respondents
(Org.Plaintiffs)

Shri N.V.Walawalkar for the Appellant.

Shri S.G.Page for the Respondents Nos.1 to 3.

CORAM : ABHAY S. OKA, J.

DATED : 19th July, 2004.

ORAL JUDGMENT.

1. Both the above Second Appeals arise out of a common Judgment and Decree and hence the same are disposed of by a common Judgment. For the sake of convenience the reference is made to the parties as per their status in the Second Appeal No.672 of 1986.

2. Second Appeal No.672 of 1986 was admitted on 25th November 1986 by observing that "the question of legality of retention by the Respondents of collections made illegally" is the substantial question of law. In so far as the Second Appeal No.673 of 1986 is concerned, the same was also admitted on 25th November 1986 on the following substantial questions of law:

"(i) Validity of the impugned imposition;

(ii) Maintainability of suit."

3. The Appellants are the Plaintiffs and the Respondent is the original Defendant. The suit was filed by the Appellants for declaration that the assessment of consolidated property tax by the Defendant at the rate of more than 12-1/2% of the rateable value from 1st October 1969 onwards is invalid, illegal and ultra vires. A prayer for mandatory injunction was also incorporated enjoining the Respondent-Council to refund the amount recovered contrary to the decision of this Court in Special Civil application No.1787 of 1972 dated 26th August 1976. A prayer was also made for perpetual injunction restraining the Respondent from recovering such illegal consolidated property tax from the year 1976 onwards. The suit was filed by invoking the provisions of Order I Rule 8 of the Code of Civil Procedure, 1908. The case made out in the plaint was that the Respondent-Municipal Council which is class "A" Municipal Council incorporated under the Maharashtra Municipalities Act, 1965, (hereinafter referred to as "the said Act") made a revision of the assessment of every property for the year 1968-69 under section 124 of the said Act at the rate of 12-1/2% of the rateable value under section 124 of the Act after following

proper procedure and bills were issued under section 150 of the said Act and amounts were recovered under the bills. The case made out in the plaint is that fresh bills under section 150 of the said Act for the period from 1st October 1969 to 31st March 1970 were issued by the Respondent claiming amount of consolidated property tax at the rate of 15%. In short by the said bills additional consolidated property tax at the rate of 2-1/2% of the rateable value was claimed in addition to the consolidated property tax at the rate of 12-1/2% already claimed by earlier bills issued covering the same period. It is further alleged that from 1970-71 bills were issued claiming consolidated property tax at the rate of 16% of the rateable value and for the year 1971-72 bills were issued for the consolidated property tax at the rate of 17% of the rateable value. A case is made out that the recovery is initiated on the basis of the Maharashtra Municipalities (Consolidated Property Tax) Rules 1969 (hereinafter referred to as "the said Rules of 1969") which were brought into force with effect from 1st June 1969. Reliance was placed on the Judgment and Order dated 26th August 1976 passed by this Court (Coram: Vaidya J.) in Special Civil Application No.1787 of 1972 and other connected petitions. A contention is raised that the said Special Civil Applications arose out of the orders passed in Appeals

under section 169 of the said Act 1965 in which challenge to the legality of bills issued by the Respondent-Council for the period from 1st October 1969 to 31st March 1970 claiming tax at the rate of 15% was upheld and it was held that the demand for tax at the rate of 15% was contrary to the provisions of section 124 of the said Act. A contention is raised in the plaint that in view of the Judgment of this Court, bills issued to various citizens are illegal and therefore, the Respondent-Council is under an obligation to make refund.

4. The suit was resisted by the Respondent by filing Written Statement. It is contended that the rate of 15% was applied only from 1st October 1969 to 31st March 1970 though the said Rules of 1969 came into force on 1st April 1969. It is submitted that the imposition of the tax at the rate prescribed by the Rules does not amount to variation in the assessment of rateable value. In the Written Statement a contention is raised that the State Government was a necessary and proper party. The Respondent also contended that the suit in a representative capacity was not maintainable.

5. The trial Court framed various issues including the issue relating to the legality and validity of the bills issued claiming property tax at the rate of 15% from 1st October 1969. The trial Court did not frame any issue regarding the jurisdiction of the civil Court to entertain the suit. The suit was decreed by the trial Court and the decree of declaration and mandatory injunction was passed. In the appeal preferred by the Respondent-Council, the decree was modified and it was observed that the levy of the assessment of consolidated property taxes at the rate of 15% by the Respondent-Municipal Council after it had assessed the same at the rate of 12-1/2% of the rateable value of the property for the year 1967-68 within a period of four years from that year at the rate higher than that is illegal and ultra vires. Injunction was also granted against the Respondent from recovering taxes at the rate more than 12-1/2% of the rateable value for the period of four years from 1967-68. A specific point for determination was framed by the Appellate Court regarding the jurisdiction of the Civil Court to entertain the suit. The said point of jurisdiction was decided in favour of the Appellants.

6. Shri Page the learned Counsel appearing for the Plaintiffs submitted that the submission of the Plaintiffs in the suit was based on the Judgment of this Court in Special Civil Application No.1787 of 1972 which was considered by the Appellate Court. He submitted that this Court held that the bills issued by the Respondent-Council at the rate of 15% of the rateable value with effect from 1st October 1969 are illegal being contrary to the provisions of section 124 of the said Act of 1965. He submitted that in view of the clear pronouncement of law by this Court, levy of the tax at the enhanced rate was held to be illegal. He submitted that in view of clause (b) to section 170 of the said Act, appeal could not have been filed under section 169 of the said Act for challenging the percentage at which the property taxes were collected on the basis of the rateable value. He submitted that as remedy of appeal was not available, the jurisdiction of the Civil Court was not ousted. He submitted that though there is no challenge to the validity of the said Rules of 1969 in the plaint, the levy of tax at the rate of 15% was clearly illegal in view of the Judgment of this Court. He relied upon the Judgment of this Court reported in 1978 Mah.L.J. page 826 (Shivmanik Dattatraya Shivangikar v/s. Latur Municipal Council &

anr.) Shri Walawalkar appearing for the Respondent-Municipal Council submitted that in view of the provisions of section 169, 170 and 171 of the said Act of 1965, remedy of preferring an appeal was available to the Appellants if they were aggrieved by the bills and therefore, the jurisdiction of the Civil Court is clearly ousted. In support of the said submission, he relied upon the Judgment of the learned Single Judge of this Court reported in 1982 Mah.L.J. page 866 (Dagdabai Manakchand & anr. v/s. Municipal Council Aurangabad). He relied upon the Judgment of another learned Single Judge of this Court reported in 1998 (3) Mah.L.J. page 49 (Ulhasnagar Municipal Council v/s. Arjun Kungooram Balani). He also relied upon the Judgment of the Apex Court reported in 2003(10) SCC page 38 (NDMC v/s. Satish Chand (deceased) by LR Ramchand). He submitted that the Respondent-Counsel gave effect to the said Rules of 1969 which were brought into force with effect from 1st April 1969. He therefore submitted that section 112(1) of the said Act will not apply to the claim made by the Respondents as the bills were based on the Rules of 1969. He submitted that there was no variation or change in the assessment list maintained by the Municipal Council and therefore, section 124 of the said Act is not attracted. He submitted that the view taken by the learned Single Judge of this court in

Special Civil Application No.1787 of 1972 is not the final word and he relied upon the Judgment of another learned Single Judge of this Court in Special Civil Application No.1732 of 1978 and other connected petitions.

7. I have carefully considered the submissions made by the learned Counsel appearing for the parties. Sections 169, 170 and 172 of the said Act of 1965 prior to its amendment in the year 1975 read thus:

> "169. Appeals against any claim for taxes or other dues included in a bill presented to any person under section 150 or any other provisions of this Act may be made to any Judicial Magistrate or Bench of such Magistrate by whom under the direction of the Sessions Judge such class of cases is to be tried.
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> 170. No appeal under the last providing section shall be entertained unless -
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> . (a) the appeal is brought within fifteen days next after the presentation of the bill complained of; and
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> . (b) an application in writing stating the grounds on which the claim of the Council is

disputed, has been made to the Council in the case of a tax on buildings or lands or both within the time fixed in the notice given under section 119 or 123 of the assessment or alteration thereof, according to which the bill is prepared; and

. (c) the amount claimed from the appellant has been deposited by him in the Municipal office.

172. No objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxes be questioned, in any other manner or by any other authority than is provided in this Act."

Shri Page, the learned Counsel for the Appellants submitted that in view of clause (b) of section 170 unless an application in writing stating the grounds on which the claim of Municipal Council is disputed has been made by the aggrieved person to the Municipal Council within the time fixed in the notice given under section 119 or section 123 of the assessment or alteration thereof, according to which the bill is prepared, an appeal under section 169 cannot be entertained. He pointed out that in substance there was

no objection raised to the assessment of the rateable value fixed under section 117 of the said Act and therefore, the Plaintiff could not have made application as contemplated by clause (b) of section 170. He submitted that if the conditions incorporated in one of the clauses of section 170 are not satisfied, appeal under section 169 will not lie. He, therefore, submitted that the remedy of appeal under section 169 was not available to the Appellants/ Plaintiffs and therefore, it cannot be said that the jurisdiction of the Civil Court under section 9 of the Code of Civil Procedure, 1908 was ousted.

8. Shri Walawalkar for the Respondents submitted that the question of compliance of clause (b) of section 170 of the Act would arise only when the challenge in the appeal is to the assessment of the rateable value under section 119 or section 123. He submitted that under section 169, an appeal is maintainable against any claim for taxes included in a bill presented under section 150 of the Act. He submitted that in the present suit, the challenge was to the increase in the rate of consolidaed property tax incorporated in the bills issued under section 150 and therefore, remedy of appeal was very much available to the Plaintiff.

9. In this connection it is necessary to refer to the Judgment of this Court in the case of Dagdabai (surpa). In view of the Judgment of the Apex Court in the case of Bata Shoe Company Ltd., reported in AIR 1977 S.C. page 955, the learned Single Judge held that the Judgments of this Court reported in 1977 Mah.L.J. page 735 (Municipal Council Morshi v/s.Tulsiram), and 1978 Mah.L.J. page 826 (Shivmanik D.Shivangikar v/s.Latur Municipal Council & anr.) are no longer a good law. The learned Single Judge held that an appeal, under section 169 of the Maharashtra Municipalities Act is comprehensive enough to include a challenge as to the legality and validity of the taxes under the provisions of the said Act of 1965. The learned Single Judge held that such an appeal is not restricted merely to the quantum of tax assessed. The learned Single Judge considered the provisions of section 172 of the said Act of 1965 in the light of the observations of the Apex Court in the case of Bata Shoe Co.Ltd. (supra) wherein the Apex Court considered the provisions of sections 84(3) and 83(1) of the C.P. and Berar Municipalities Act which are in pari materia with section 172 and section 169 of the said Act. In the case of NDMC (supra) the Apex Court considered the provisions of sections 84 and 86 of the Punjab Municipal Act, 1911. Section 86 of the said Punjab Act is in pari materia

with the provisions of section 172 of the said Act of 1965. The Apex Court after considering the law on the subject held that a civil suit for challenging the assessment and levy of property tax was clearly barred.

10. Another learned Single Judge of this Court in the case of Ulhasnagar Municipal Council (supra) has taken a view that in view of section 172 of the said Act of 1965, a Civil Court has no jurisdiction to entertain a suit challenging the demand notices issued by the Municipal Council for imposition of the property tax, as remedy of preferring an appeal under section 169 of the said Act was available.

11. It is also necessary to refer to the judgment of the Apex Court in the matter of Bata Shoe Co.Ltd. (supra). The Apex Court considered the provisions of section 84(3) of the C.P. and Berar Municipalities Act, 1922, which is are in pari materia with section 172 of the said Act of 1965. The Apex court after referring to the said provisions held that the question of legality and validity of the tax has to be challenged only in accordance with the provisions mentioned in the Act and civil suit will not lie for raising objection to any valuation or assessment or levy of octroi.

12. If the plaint in the present suit is perused, it is very clear that the challenge is to the amount claimed in the bill under section 169 of the said Act of 1965. The claim is for recovery of consolidated property tax at a higher rate in accordance with the said Rule of 1969. In short the challenge is to the quantum of tax claimed in the bills. As the Appellants had not challenged the assessment of rateable value fixed, there was no question of persons affected making an application contemplated by clause (b) of section 170 of the said Act. The Clause (b) of section 170 will apply only when the objection in the appeal is as regards fixation of rateable value. When challenge is not to the fixation of rateable value, obviously it cannot be said the appeal shall not be entertained unless compliance is made with the said clause (b) of section 170. Section 169 provides rights of appeal against any claim for tax or other dues included in the bill presented to any person under section 150 of the said Act. Section 170 provides for the procedure for preferring the appeal under section 169. It is obvious that clause (b) of section 170 would be attracted only if challenge was to assessment of rateable value. It cannot be said that clause(b) of section 170 restricts the scope of appeal under section 169. In the present case the challenge was only to the enhancement of the

rate at which the tax is charged and there was no dispute about the assessment or fixation of rateable value.

13. Section 172 of the said Act of 1965 provides that no objection shall be taken to any valuation, assessment or levy in any manner other manner than what is provided in the Act. It is obvious that remedy was available under section 169 for challenging the bill which were served. In view of this position, as per the law laid down by the Apex Court in the case of Bata Shoe Co.Ltd. (supra) and in the case of NDMC (supra) as well as the law laid down by the learned Single Judge of this Court in the case of Dagdabai (supra), challenge to the rate at which taxes are claimed ought to have been made only by way of an appeal under section 169 of the said Act of 1965. As remedy under section 169 was available, the jurisdiction of the Civil Court was ousted. The suit filed by the Appellants was therefore not maintainable.

14. In view of this position, the findings which are recorded by the Courts below on the merits of the case are findings recorded by the Courts having no jurisdiction. In the result, the Second Appeal No.673 of 1986 is allowed and the Judgments and Decrees of both the Courts below are quashed and set aside and Reg.Civil

Suit No.454 of 1977 stands dismissed.

15. As stated earlier the suit is dismissed as the same was not maintainable. In view of the order passed in Second Appeal No.673 of 1986, Second Appeal No.672 of 1986 is dismissed with no order as to costs throughout.

Judge.